

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS DUBUC,

Plaintiff-Appellee,

v

GOLDEN AND KUNZ, P.C., ROBERT H.
GOLDEN, and ARMAND D. KUNZ,

Defendants-Appellants.

UNPUBLISHED
December 20, 2005

No. 255438
Oakland Circuit Court
LC No. 01-030403-NM

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Defendants appeal by leave granted from the order denying their motion for summary disposition on plaintiff's claim of legal malpractice. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff graduated from law school and passed the bar examination. A district character and fitness committee interviewed him about his character and fitness to practice law and found that he did not possess the character and fitness to practice law in Michigan. Plaintiff appealed the district committee's report and recommendation to the standing committee on character and fitness ("SCCF") and retained defendants to represent him. The SCCF also found that plaintiff did not possess the current fitness and character to practice law. Plaintiff discharged defendants, retained another attorney, and appealed the SCCF'S report and recommendation to the Board of Law Examiners ("BLE"). The BLE also found that plaintiff did not possess the current character and fitness to practice law and denied his application to practice law in Michigan. Plaintiff complained for a writ of mandamus in the Michigan Supreme Court to direct the BLE to approve his application. The Michigan Supreme Court denied the complaint. *Dubuc v State Bd of Law Examiners*, ___ Mich ___; 627 NW2d 603 (2001). Plaintiff then appealed to the United States Supreme Court, which denied certiorari. *Dubuc v Mich Bd of Law Examiners*, 534 US 954; 122 S Ct 354; 151 L Ed 2d 268 (2001).

Plaintiff then sued defendants in Oakland Circuit Court for misrepresentation, malpractice, conspiracy, and breach of contract based on their representation of him before the SCCF. Plaintiff alleged that defendants' negligent representation of him before the SCCF resulted in an inadequate record on which the BLE relied and which proximately caused the BLE to deny his application for admission to the State Bar of Michigan. Defendants moved for

summary disposition, which the circuit court granted with regard to the conspiracy and breach of contract claims. After some procedural matters that involved an appeal to and remand from this Court, defendants again moved for summary disposition on plaintiff's malpractice claim arguing that their representation of plaintiff before the SCCF was not the proximate cause of the BLE's denial of plaintiff's application to practice law. The circuit court denied the motion finding an issue of fact with regard to whether defendants' representation of plaintiff before the SCCF proximately caused the BLE to deny plaintiff's application. Defendants moved for reconsideration, which the circuit court denied.

The elements of legal malpractice are: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) the negligence was a proximate cause of an injury; and (4) the fact and extent of the injury. The plaintiff has the burden of proving all the elements of the suit. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994). Speculative and equivocal evidence of causation is insufficient to support liability. The plaintiff must present substantial evidence from which a jury can conclude that it is more likely than not that, but for the defendant's conduct, the plaintiff's injuries would not have occurred. *Id.* at 586-587. To prove proximate cause, a plaintiff must establish that the defendant's action was a cause in fact of the claimed injury and that the defendant should be legally responsible for the injury on the basis of foreseeability. *Pontiac School District v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 613; 563 NW2d 693 (1997).

Upon our de novo review of the record, we find that plaintiff has identified no issue of fact to support a finding that defendants' representation of plaintiff before the SCCF proximately caused the BLE to deny his application. Although the BLE had the record created before the SCCF and clearly reviewed the information contained in it, plaintiff presented no evidence that the BLE's review of the record factually caused the BLE to deny plaintiff's application or that the BLE's denial of plaintiff's application was reasonably foreseeable based on defendants' representation of plaintiff before the SCCF. Plaintiff and his new counsel had the opportunity to correct any deficiencies in the SCCF record by presenting additional evidence and argument to the BLE in a de novo hearing, which occurred about a year after the SCCF hearing. Further, the BLE specifically noted that it was plaintiff's own testimony and demeanor before the BLE in the de novo hearing that convinced the BLE that plaintiff did not have the then current character and fitness to practice law in Michigan. Accordingly, we find that there is no genuine issue of material fact that defendants' representation of plaintiff before the SCCF resulting in an allegedly inadequate record did not proximately cause the BLE to deny plaintiff's application for admission to the State Bar of Michigan.

Reversed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood